

JS 44 (Rev. 06/17)

## CIVIL COVER SHEET

18-cv-340

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Joseph A. Rosamilia

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Philadelphia, PA

(c) Attorneys (Firm Name, Address, and Telephone Number)

Julianne Peck, Humans Peck LLC, No. 79966  
43 Paoli Plaza #426, Paoli, PA 19301  
215-868-6214

## DEFENDANTS

Export Now, Inc.; Frank Kavim

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

Summit County, OH

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State ☒ 1 PTF ☐ 1 DEFCitizen of Another State ☐ 2 PTF ☐ 2 DEFCitizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEFIncorporated or Principal Place of Business In This State ☐ 4 PTF ☐ 4 DEFIncorporated and Principal Place of Business In Another State ☐ 5 PTF ☒ 5 DEFForeign Nation ☐ 6 PTF ☐ 6 DEF

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from Another District (specify)☐ 6 Multidistrict Litigation - Transfer☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Breach of contract, Wage Payment + (6) Action Law

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

150,000

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

## VIII. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

JAN 29 2018

DATE

1/29/18

SIGNATURE OF ATTORNEY OF RECORD

Julianne Peck

S.T.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PD

UNITED STATES DISTRICT COURT

18

340

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 127 Ellsworth Street, Philadelphia PA 19147

Address of Defendant: Export Now, Inc., 526 South Main St. Akron, Ohio 44311

Place of Accident, Incident or Transaction: Frank Lavin, 3815 Beecher NW, Washington DC 20007

(Use Reverse Side For Additional Space)

Philadelphia PA

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases

(Please specify) \_\_\_\_\_

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☒ All other Diversity Cases

(Please specify) Breach of Contract

ARBITRATION CERTIFICATION

(Check Appropriate Category)

Juanne Peck, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 1/29/18

Juanne Peck  
Attorney-at-Law

79966  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

JAN 29 2018

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1/29/18

Juanne Peck  
Attorney-at-Law

79966  
Attorney I.D.#

**PD**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Joseph A Rosamilia

CIVIL ACTION

v.  
 Export Now, Inc. and  
 Frank L. Lavin

NO. **18 340**

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

1/29/18  
 Date

Julianne Peck  
 Attorney-at-law

Plaintiff  
 Attorney for

215-868-6214

Telephone

FAX Number

jpecke.homanspeck,  
 E-Mail Address com

JAN 29 2018

#400  
HOMANS PECK, LLC  
Julianne Peck, Esq. (I.D. No. 79966)  
43 Paoli Plaza #426  
Paoli, PA 19301  
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PD

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA 18 340

JOSEPH A. ROSAMILIA  
127 Ellsworth Street  
Philadelphia, 19147

Plaintiff,

v.

EXPORT NOW, INC.  
526 South Main Street  
Akron, Ohio 44311

FRANK L. LAVIN  
3815 Beecher NW  
Washington, D.C. 20007

Defendants.

CIVIL ACTION  
NO.

JURY TRIAL DEMANDED

FILED  
JAN 29 2018  
By KATE BARKMAN, Clerk  
Dep. Clerk

COMPLAINT

Plaintiff, Joseph Rosamilia, by and through his undersigned counsel, brings this action against Defendants, Export Now, Inc. and Frank Lavin, for fraudulent inducement, breach of contract, violation of the Pennsylvania Wage Payment and Collection Law ("WPCL"), and unjust enrichment.

Defendants fraudulently induced Plaintiff to join Export Now as its Chief Financial Officer based on false promises of minimum compensation in the amount of \$180,000, a minimum 3% equity interest in the company, and minimum severance in the amount of \$180,000

glen

in event that his employment terminated other than for cause. Defendants failed to keep any of these promises.

Plaintiff seeks damages in excess of \$375,000 including all wages he earned through the termination of his employment, a minimum 3% equity interest in Export Now, the severance payments he was promised, liquidated damages under the WPCL, attorney's fees, compensatory damages, punitive damages, and all other relief to which he may be entitled as a result of Defendants' conduct.

### **PARTIES**

1. Plaintiff, Joseph Rosamilia, is an individual and citizen of the Commonwealth of Pennsylvania. Plaintiff resides at 127 Ellsworth Street, Philadelphia, Pennsylvania 19147.
2. Defendant, Export Now, Inc., is a Delaware corporation with its principal place of business located at 526 South Main Street, Akron, Ohio 44311.
3. Defendant, Frank Lavin, is an individual and citizen of Washington, D.C. Lavin resides at 3815 Beecher N.W., Washington, D.C. 2007.
4. Export Now provides a turnkey solution for brand name companies by importing, storing, selling, delivering, and settling transactions on the electronic platform Tmall in China.
5. Lavin is the founder and Chief Executive Officer ("CEO") of Export Now.
6. At all times material hereto, Defendant Export Now acted by and through its subsidiaries, owned entities, authorized agents, servants, workmen, and/or employees who acted within the course and scope of their employment with the Defendant and in furtherance of Defendant's business.
7. At all times material hereto, Defendant Lavin acted within the course and scope of his employment with Defendant Export Now, and in furtherance of Defendant's business.

### **JURISDICTION AND VENUE**

8. Counts I, III, and IV of this Complaint respectively assert claims against both Defendants for fraudulent inducement, violation of the Pennsylvania Wage Payment and Collection Law, and unjust enrichment. Count II of this Complaint asserts a claim against Defendant Export Now for breach of contract.

9. The District Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1332 (Diversity Jurisdiction).

10. Venue is proper pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events upon which the allegations in the Complaint are based occurred within this district.

### **FACTUAL ALLEGATIONS**

11. In or about the end of August 2011, Defendants negotiated with Rosamilia to serve as its Global Chief Financial Officer (“CFO”).

12. To induce Rosamilia to immediately join Export Now, which, at the time, was a start-up company, it entered into a Letter of Intent dated September 1, 2011, with Rosamilia in which it promised:

- To temporarily retain Rosamilia as a consultant at the rate of \$9,000 per month (due to the lack of existing appropriate HR systems), after which it would “use [its] best efforts to convert his status from consultant . . . to employee by January 31, 2012.”
- To award Rosamilia 5,000 shares of restricted stock (assuming he remained associated with Export Now) on March 1, 2012 and September 1, 2012 (for a total of 10,000 shares).

A true and correct copy of the Letter of Intent is attached hereto as Exhibit “A,” and is incorporated herein by reference.

13. Defendants, promised Rosamilia that once he was converted to an employee in or about January 2012, it would pay him:

- a base salary in the range of \$180,000 to \$240,000 per year;
- provide him with an equity interest in the company in the form of restricted stock worth 3% to 5% with 6 month vesting over the course of three years; and
- pay him severance in the amount of one to two years of his base salary in the event that the company terminated his employment without “Cause,” with “Cause” defined as “gross negligence or willful misconduct.”

A summary of these terms is memorialized in the correspondence attached hereto as Exhibit “B.”

14. All of these promises were material to Rosamilia’s decision to join Export Now.

15. On November 17, 2011, Defendants, noting the critical role that Rosamilia played in helping the company grow to date, asked Rosamilia to serve in the additional role of Assistant Treasurer, and paid him an additional \$1,000 per month.

16. Despite their promise, and despite the fact that Rosamilia was in all relevant respects an employee of Export Now, Defendants failed to further increase his salary or to convert his status (for tax and payroll purposes) in January 2012.

17. In or about May 2012, Rosamilia (together with other members of the senior management team who had been promised equity) pressed Defendants for a written agreement.

18. Defendants reneged on its promise to Rosamilia for restricted stock and instead presented him (and other senior management team members) with a proposed agreement for stock options to be purchased at a price of \$9.091 per share, which Rosamilia and the other senior management team members rejected.

19. Upon information and belief, following the termination of Rosamilia’s employment, the other members of the senior management team were provided with an equity plan that they accepted.

20. In or about June 2012, Rosamilia requested the increased pay that he was promised and questioned why Defendants had not converted his status (as well as the rest of the management team) from independent contractor to employee, expressing concern that it would create potential issues with the Internal Revenue Service.

21. Defendants refused to convert Rosamilia's status, stating that it would be too expensive. However, they did agree to raise Rosamilia's rate of pay to \$180,000 per year (or \$15,000 per month), noting the "strong job" that he had been doing as CFO.

22. In January 2013, due to cash flow issues, Lavin reduced Rosamilia's payments to \$10,000 per month (which annualizes at \$120,00 per year) and promised to pay Rosamilia the difference in the future.

23. In December 2013, due to continued cash flow issues, Lavin further reduced Rosamilia's payments to \$5,000 per month (or \$60,000 per year), and again promised to pay him the difference in the future.

24. Defendants' promises to pay this wage difference in the future was material to Rosamilia's decision to continue working for Export Now.

25. Throughout his tenure with Export Now, Rosamilia never received a performance review, and never received any indication that Defendants were unhappy with his performance.

26. On January 26, 2015, with no notice whatsoever, Defendants informed Rosamilia that it was terminating his employment as of January 31, 2015, stating that they had to let him go because he had not sold anything and had not raised any money for the company.

27. As the CFO, Rosamilia had never been tasked with either duty. Moreover, neither of the alleged bases for terminating Rosamilia's employment constitutes "Cause" under the parties' agreement.

28. When Rosamilia asked about what he was owed by the company, Lavin suggested they resolve this on a later date. In the meantime, Rosamilia agreed to stay involved with Export Now to help ensure a smooth transition while the company sought to replace him.

29. Rosamilia reached out to Lavin on several dates between January 30, 2015, and April 7, 2015, to discuss payment of his outstanding salary, equity, and severance.

30. Throughout these discussions, and while Rosamilia continued to aid in the transition of his duties, Lavin refused to respond to Rosamilia's demands.

31. Instead, without ever disputing that the company was in debt to Rosamilia, Lavin strung him along, until on April 7, 2015, when he summarily took the position, for the first time, that the company had kept all of its promises to Rosamilia.

32. On February 23, 2016, Rosamilia addressed the Board of Directors of Export Now, Inc. seeking his unpaid wages from January 13, 2013 through the end of January 2015 (which total \$195,000), the severance he was promised (which, at a minimum totaled \$180,000), and his 3% equity interest in the Company (which had fully vested during Rosamilia's tenure with the company), and the value of which is unknown at this time.

33. On February 25, 2016, Ozan Gursel, the company's Chief Operating Officer ("COO"), made a "friendly" call to Rosamilia to ask what he wanted, though he stated that he had no authority to negotiate and had been instructed not to send anything in writing. Rosamilia stated he wanted everything he was owed, to which Gursel stated that it was his understanding that the company owed Rosamilia the accounts payables that were "on the books."

34. To date, however, Defendants have refused to pay the wages they admitted were due, or the promised equity and severance.

35. Defendants' conduct constituted bad faith.

36. Defendants' conduct was willful and malicious, intentional, and outrageous under the circumstances.

**COUNT I**

**(FRAUDULENT INDUCEMENT)  
Defendants Export Now and Lavin**

37. Plaintiff incorporates herein by reference Paragraphs 1 through 36 above as if set forth herein in their entirety.

38. Defendants made the above-referenced material promises to Rosamilia to induce him to join Export Now and to remain with Export Now after Export Now reduced Rosamilia's monthly payments.

39. Defendants made these promises falsely, with knowledge of their falsity, and/or with recklessness as to whether the statements were true or false.

40. Defendants made these promises with the intent of misleading Rosamilia to rely upon them.

41. Rosamilia justifiably relied upon these promises.

42. As a direct and proximate result of this reliance Rosamilia has sustained damages and losses set forth herein in excess of \$375,000, including lost salary, lost severance, and the lost equity interest in Export Now, accrued interest, compensatory damages, and attorney's fees and costs.

**COUNT II**

**(BREACH OF CONTRACT)  
Defendant Export Now**

43. Plaintiff incorporates herein by reference Paragraphs 1 through 42 above as if set forth herein in their entirety.

44. Defendant Export Now promised to pay Rosamilia a minimum base salary of \$180,000.

45. Defendant paid Rosamilia the promised minimum base salary of \$180,000 (or \$15,000 per month) from July 2012 through December 2012.

46. Respectively, in January 2013 and December 2013, and as a result of cash flow issues, Defendant reduced its monthly payments to Rosamilia first to \$10,000 per month and then to \$5,000 with a promise to pay the difference in the future.

47. Despite demand, Defendant has not paid Rosamilia his full base salary for the period December January 2013 through and including January 2015, resulting in damages in excess of \$195,000.

48. Defendant promised to award Rosamilia a minimum 3% interest in the company through restricted stock, which would vest every 6 months for a period of three years following his initial association with the company.

49. The promised equity fully vested during Plaintiff's tenure with the company, resulting in unknown losses to Plaintiff.

50. Despite demand, Defendant has refused to acknowledge the equity interest that Rosamilia earned prior to the termination of his employment.

51. Defendant promised to pay Rosamilia severance in the minimum amount of \$180,000 in the event that the company terminated his employment without “Cause,” with “Cause” defined as “gross negligence or willful misconduct.”

52. Defendant terminated Rosamilia’s employment, effective January 31, 2015, without “Cause.”

53. As a direct and proximate result of Defendant’s breaches of the terms of its agreement with Rosamilia, Plaintiff has sustained total damages and losses in excess of \$375,000 including lost salary, lost severance, the lost equity interest in Export Now, and accrued interest.

### **COUNT III**

#### **(VIOLATION OF THE WPCL)**

##### **All Defendants**

54. Plaintiff incorporates herein by reference Paragraphs 1 through 53 above as if set forth herein in their entirety.

55. The salary, severance and equity interest to which Plaintiff is entitled pursuant to his agreement with Defendants constitutes wages within the meaning of the Pennsylvania Wage Payment and Collection Law (“WPCL”).

56. At all times material hereto Plaintiff was an employee within the meaning of the WPCL.

57. At all times material hereto each Defendant was an “employer” within the meaning of the WPCL.

58. Defendants’ failure to pay the wages (including the severance and equity interest) to which Plaintiff is entitled violates the WPCL.

59. Plaintiff made a proper demand for these wages.

60. The wages to which Plaintiff is entitled have remained unpaid for more than 60 days beyond when they were due, and for more than 60 days beyond Plaintiff's demand for payment.

61. As a direct and proximate result of Defendants' violation of the WPCL, Plaintiff has sustained damages and losses set forth herein in excess of \$375,000 including lost salary, lost severance, and the lost equity interest in Export Now, accrued interest, liquidated damages, attorney's fees and costs.

**COUNT IV**

**(UNJUST ENRICHMENT)  
Defendants Export Now and Lavin**

62. Plaintiff incorporates herein by reference Paragraphs 1 through 61 above as if set forth herein in their entirety.

63. Plaintiff conferred benefits on the Defendants.

64. The Defendants appreciated the benefits.

65. Defendants accepted and retained the benefits under circumstances that make it inequitable for them to retain the benefits without paying for the value of the benefits.

66. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff has sustained damages and losses set forth herein in excess of \$375,000, including accrued interest.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant:

- (a) Declaring that Defendants fraudulently induced Plaintiff into entering into an Agreement with them;
- (b) Declaring that Defendants fraudulently induced Plaintiff into remaining with Export Now after it reduced his monthly wage payments;
- (c) Declaring the acts and practices complained of herein to be in breach of contract;
- (d) Declaring the acts and practices complained of herein to be in violation of the WPCL;
- (e) Declaring the acts and practices complained of herein to have unjustly enriched Defendants;
- (f) Awarding damages to Plaintiff to make Plaintiff whole for Defendants' fraudulent inducement;
- (g) Awarding damages to Plaintiff to make Plaintiff whole for Defendant Export Now's breach of contract;
- (h) Awarding damages to Plaintiff to make Plaintiff whole for Defendants' violation of the WPCL;
- (i) Awarding liquidated damages under the WPCL;
- (j) Awarding damages to Plaintiff to make Plaintiff whole for Defendants' unjust enrichment;
- (k) Awarding Plaintiff costs of this action, together with reasonable attorney's fees;
- (l) Awarding compensatory damages, including damages for emotional distress;

- (m) Awarding punitive damages;
- (n) Awarding Plaintiff such other damages as are appropriate in connection with the legal claims alleged herein; and
- (o) Granting such other and further relief as this Court deems appropriate.

**JURY DEMAND**

Plaintiff demands a trial by jury of twelve on all issues and claims asserted herein.

Respectfully submitted,

HOMANS PECK, LLC

By:



Julianne Peck (I.D. No. 79966)

43 Paoli Plaza #426

Paoli, PA 19301

(215) 868-6214

jpeck@homanspeck.com

Counsel for Plaintiff

**EXHIBIT "A"**

Frank Lavin, Chairman  
Export Now, Inc.  
Central Plaza, Suite 701  
18 Harbour Rd  
Wanchai, Hong Kong SAR, China

September 1, 2011

Via Email: jrosamilia@pretiumgroupltd.com

Joseph A. Rosamilia  
Apt. PH-108, Ben Franklin House  
834 Chestnut Street  
Philadelphia, PA 19107

Re: Letter of Intent to Enter into a Consulting Contract

Dear Joseph,

I am writing you this Letter of Intent in order to document our intent to have you enter into a Consulting Contract with Export Now, Inc. ("Export Now"). The Consulting Contract will be entered into within 10 days of the date hereof. The Consulting Contract will include the following core terms:

1. As of the date hereof, you will be retained as an independent contractor with the title of Global Chief Financial Officer of Export Now. We are currently seeking to institute HR systems so that we can convert such internal independent contractors into employees. We will use our reasonable best efforts to convert your status from consultant (along with others) to employee by January 31, 2012.
2. You will be paid \$US9,000 per month in arrears, starting on September 30, 2011. Immediately after your execution of this Letter, you will be paid a signing bonus of \$US9,000.
3. Assuming your continued association with Export Now, you will receive 5,000 shares of restricted stock on each of the following dates: March 1, 2012 and September 1, 2012. These grants are contingent on receiving necessary IRS approvals and, if they are not forthcoming or are too burdensome to achieve, we will negotiate in good faith an alternative but equivalent form of equity compensation.
4. You will receive 20 days vacation per year and will be reimbursed for normal and reasonable business expenses associated with your work for Export Now.
5. You agree that during the term of your association with the company and at any time thereafter you will not disclose any confidential information of Export Now or its

affiliates; you further agree that that during the term of your association and for a period of two years thereafter, you will not compete with or solicit any of the customers or employees of Export Now or its affiliates.

If this accurately reflects our discussions I ask that you sign and return to me a copy of this letter and I will then have our counsel prepare a draft of a Contract to be entered into by you and Export Now.

Very Truly Yours,

EXPORT NOW, INC.

By: Frank Lavin, Chairman

AGREED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joseph A. Rosamilia

**EXHIBIT "B"**



Joseph Rosamilia &lt;joh@exportnow.com&gt;

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**Basic Terms for Joh contract discussion**

2 messages

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**Joseph Rosamilia** <joh@exportnow.com>  
To: Frank Lavin <frank@exportnow.com>

Mon, Jun 25, 2012 at 1:18 PM

Frank,

These are the terms discussed with Seth in Sept for permanent start, which we can use as basis of our discussion. When would you be free to discuss?  
Would like to do this soon, as we are trying to put everyone on salary from July, if possible.

Base: \$180k - \$240k

Equity: 3% - 5% in Restricted Stock, 6-monthly vesting

Bonus: Discretionary bonuses

Severance: 1 – 2 years base if dismissed without cause, defined as gross negligence or willful misconduct

Permanent Start: Dec2011/Jan2012

Thanks and best,

Joh

---

**Frank Lavin** <frank@exportnow.com>  
To: Joseph Rosamilia <joh@exportnow.com>

Wed, Jun 27, 2012 at 4:32 AM

Joh -- we can discuss when the round closes.

best...Frank

[Quoted text hidden]

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3/18/2015

Export Now, Inc. Mail - Basic Terms for Job contract discussion

**Frank Lavin**  
Chairman & CEO

**Export Now**  
+852 9091 5826  
[www.exportnow.com](http://www.exportnow.com)



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